

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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**FILE:** B-213063**DATE:** October 12, 1983**MATTER OF:** James M. Smith, Inc.**DIGEST:**

1. Whether a contractor is in compliance with the Service Contract Act is a matter for the Department of Labor.
2. GAO does not review an affirmative determination of a prospective contractor's responsibility absent a showing of fraud on the part of procurement officials or that the solicitation contains definitive responsibility criteria that allegedly have been misapplied.
3. Where bidders commit themselves by their bids to paying specified Service Contract Act wage rates, bids are responsive and bidding was conducted on an equal basis.

James M. Smith, Inc., the incumbent contractor, protests the proposed award of a contract to Beltway Limousine Service, Inc. under invitation for bids (IFB) No. 263-83-B(87)-0103 issued by the National Institutes of Health, Department of Health and Human Services. Smith, the second low bidder, urges that it should receive award because Beltway is not a responsive, responsible bidder under the IFB, which incorporates a Department of Labor wage determination pursuant to the Service Contract Act of 1965. Smith alleges that Beltway's bid is nonresponsive because Beltway does not intend to comply with that wage determination, and that the firm is nonresponsible because of its past record of non-compliance. In the alternative, Smith contends that the IFB should be canceled and resolicited because all bidders were not competing on an equal basis. We summarily deny the portion of the protest concerning the responsiveness of Beltway's bid and dismiss the remainder.

The Service Contract Act places the responsibility for enforcing its provisions on the contracting agency head and the Secretary of Labor. 41 U.S.C. § 352(b) (1976). We

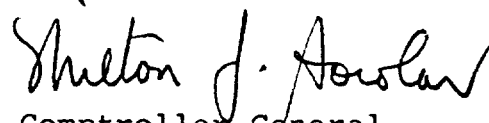
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therefore generally do not consider protests that a contractor is not in compliance with the provisions of the Act. See James M. Smith, Inc., B-210982, March 25, 1983, 83-1 CPD 309.

A bidder's intention to comply is something to be considered in the contracting officer's responsibility determination. However, we also will not review the question of Beltway's responsibility, since this Office does not review a contracting officer's affirmative determination of a prospective contractor's responsibility absent a showing of fraud on the part of procuring officials or that the solicitation contains definitive responsibility criteria that have allegedly been misapplied.

As for Smith's allegations that Beltway's bid was non-responsive and that all bidders were not afforded an opportunity to compete on an equal basis, Smith's own submission establishes that all bidders had acknowledged the IFB amendment incorporating a revised wage determination without exception. Therefore, by signing and submitting their bids, all bidders, including Beltway, were bound to perform, without exception, the exact thing called for in the IFB. Accordingly, the Beltway bid was responsive. See Bond Transfer and Storage Company, B-210251, January 24, 1983, 83-1 CPD 87. Moreover, since all bidders committed themselves to pay the indicated rates, we fail to see how bidders did not compete on an equal basis.

The protest is summarily denied in part and dismissed in part.

for   
Comptroller General  
of the United States